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AGENDA ITEM 3-A

TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

I. SUBJECT: Assembly Bill 376 (Nava) –
Introduced February 15th, 2007
Airport Police Officers

*Sponsor: Service Employees International Union (SEIU)
Local 620, Santa Barbara Municipal Airport Patrol
Officers, Peace Officers Research Association of
California*

II. PROGRAM: Legislation

III. RECOMMENDATION: Neutral

This bill would give contracting agencies the option to reclassify specified airport law enforcement officers from miscellaneous to local safety.

IV. ANALYSIS:

Currently, those employees who perform duties as airport police/patrol officers are typically classified as local miscellaneous members in the CalPERS system if their functions do not clearly fall within the scope of active law enforcement. AB 376 would provide contracting agencies the option to reclassify these members as local safety members, "if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, or properties of the employing agency."

Many airport police officers are responsible for the safety of the public while they are on airport property. These airport officers are classified as peace officers under California Penal Code Section 830.33 and in many cases are also required to carry firearms and other safety equipment. This legislation would allow such officers to receive retirement and disability benefits equal to those of other local safety positions, should the contracting agency choose to contract for this provision.

Background

In 1935, an enhanced retirement formula and special industrial death and disability benefits were created in recognition of public employees working in hazardous and physically demanding jobs. The first safety class of employment was the California State Highway Patrol. In subsequent years, more safety classes were added, and in 1945 the first local safety classes were created.

Local Safety Membership in CalPERS

Safety members receive enhanced retirement formulas and industrial death and disability benefits. Basic requirements for safety status have included actively enforcing the law and being substantially responsible for the protection of people and property.

Some local safety designations, such as local police officers, firefighters, sheriffs, and investigators for district attorneys' offices, are mandated by statute. A local agency that contracts with CalPERS and provides a safety plan for its employees must provide safety status for those members.

Many other local safety designations specified in the Public Employees' Retirement Law (PERL) are available to local contracting agencies as a contract option; some of these include lifeguards, emergency medical technicians, harbor and port police, police in school districts, park rangers, and others.

These optional local safety designations permit local contracting agencies to elect to place certain categories of employees in safety membership. Without such election, these employees would be classified as local miscellaneous members. When local agencies elect to contract for these optional safety classifications, they must provide CalPERS with duty statements for the proposed safety groups. CalPERS determines if the proposed safety group can be included in any of the existing safety classifications available to local agencies.

For reclassifications from miscellaneous to safety membership, the PERL specifically requires that members must be currently employed (active) by the employer requesting the reclassification and must be employed in the position that is being reclassified. Persons so employed also have previous qualifying service transferred (at no cost to the member) to the "safety" classification; this reclassification becomes a future liability to the agency. (See discussion under "Program Costs" below.)

Proposed Changes

This bill would expand the definition of "local safety member" to include any airport patrol officer, airport law enforcement officer, or airport police officer employed by a contracting CalPERS agency. This section only applies to local agencies that

choose to amend their contracts to include the provision, thereby allowing the local agencies to retain their decision-making ability. Not only cities, but other entities operating an airport (e.g., counties, Airport Districts, Joint Powers Authorities) would be eligible to contract for this provision.

Legislative History

- 2003 AB 133 (Bogh) - Would have allowed deputy coroners in Riverside County be reclassified as public safety employees through contract amendment. The bill did not otherwise authorize the reclassification of other agencies' deputy coroners as safety members. The bill died pursuant to Art. IV, Sec. 10(c) of the Constitution. *CalPERS' position: oppose unless amended*
- 2002 Chapter 379 (AB 425, Oropeza) - Created a safety classification for local prosecutors. This classification was created as a mandated safety classification (not a contracting option) and included all public prosecutors in cities and counties.
- 2001 AB 657 (Pacheco)- Would have provided safety status to employees performing hazardous materials services. The bill died pursuant to Art. IV, Sec. 10(c) of the Constitution. *CalPERS' position: neutral*
- Chapter 787 (AB 1082, Nation) - Provided optional safety status for park rangers employed by local contracting agencies. The bill was chaptered into law on October 13th, 2001. *CalPERS' position: no position*
- AB 1254 (Florez) - Would have created a safety classification for local prosecutors. This classification would have been a mandated safety classification (not a contracting option) and would include all public prosecutors in cities and counties. The bill died pursuant to Art. IV, Sec. 10(c) of the Constitution. *CalPERS' position: oppose*
- SB 695 (Karnette) - Would have created a contract option to provide safety status for employees whose functions clearly fall within the scope of active law enforcement, but who are currently classified as local miscellaneous members. This bill died on file. *CalPERS' position: neutral*

Issues

1. Arguments in Support

Personnel performing police functions in an airport should not be penalized because they are not employed by a standard police agency. They are still peace officers under the Penal Code and may be required to carry firearms and

perform many of the same functions as other police. Since 9/11, and the subsequent creation of the Transportation Security Administration, it has become increasingly clear that airport police play an important part in guaranteeing the safety of the public at airports under potentially dangerous circumstances.

Organizations in Support: Service Employees International Union (SEIU) Local 620 (co-sponsor), Santa Barbara Municipal Airport Patrol Officers (co-sponsor), Peace Officers Research Association of California (co-sponsor)

2. Arguments in Opposition

No known opposition at this time.

Organizations in Opposition (as of 10/16/07): none

3. Current standards used by CalPERS to determine safety

The term “active law enforcement” is used to determine which groups belong in the safety categories. CalPERS relies upon court cases and opinions of the Attorney General to define what is meant by the term “active law enforcement” for safety service.

4. Social Security Exclusion

This bill does not mention any exclusion of these employees from membership in Social Security. In general, firemen and policemen make higher contributions to their retirement plans and do not contribute to Social Security. Employees reclassified from miscellaneous to safety will continue to be subject to Social Security inclusion unless the position has been determined to be fireman/policeman for Social Security purposes. Exclusion from Social Security would require a further amendment to the Government Code under Part 4, Article 1.

5. Legislative Policy Standard

The Board’s Legislative Policy Standards suggest a neutral position on legislative proposals to reclassify members from miscellaneous to safety, whether mandated or optional. AB 376 would allow contracting agencies to reclassify specified airport patrol officers from miscellaneous to safety.

V. STRATEGIC PLAN:

This item is not a specific product of the Annual or Strategic Plans, but is a part of the regular and ongoing workload of the Office of Governmental Affairs.

VI. RESULTS/COSTS:

This bill would create an optional benefit for public agencies contracted with CalPERS that would allow any local miscellaneous employees who are employed as airport police officers to be reclassified as safety.

Program Costs

Since this is an optional contract benefit, it is difficult to predict how many public agencies would choose to exercise this option. Additionally, the actual cost of reclassification will be different for each public agency and will depend on the demographics of the safety plan, the other optional benefits offered in the safety plan, and the number of members affected by the bill. Regardless, there will be an increase in contributions for both the employer and employee as a result of moving from local miscellaneous to local safety. These costs may be offset somewhat by removing these employees from Social Security inclusion; however, in computing employer rates, CalPERS does not consider the effect of Social Security inclusion or exclusion.

Administrative Costs

CalPERS performs employee contract amendments as part of its usual and ongoing workload.

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